IN THE

Supreme Court of the United States

FILED
APR 12 1946
CHARLES ELMORE CROPLEY

OCTOBER TERM, 1945.

No. 1105

ALMON A. HEATH,

Petitioner,

vs.

HENRY G. FRANKEL and L. V. FRANKEL,

Respondents.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Judicial Circuit and Brief in Support Thereof.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH JUDICIAL CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Almon A. Heath, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit filed and entered on January 15, 1946 [R. 1067], affirming judgment of the United States District Court, Southern District of California, Central Division, entered July 12, 1944 [R. 72], holding invalid United States Letters Patent 1,989,922 [R. 781] and certain claims of Patent 2,203,280 [R. 787].

The opinion of the Circuit Court of Appeals [R. 1062] appears at ..... F. (2d) .....

Petitioner (plaintiff-appellant below) petitioned for a rehearing, which was denied on February 26, 1946 [R. 1068].

Jurisdiction.

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935; also Act of March 8, 1934, Title 28, U. S. C. A. 347.

Statement.

Petitioner's bill of complaint below [R. 2] charged infringement of said Letters Patents and respondents' answer [R. 6] alleged affirmatively that the patents were invalid because of prior knowledge and use and lack of patentable novelty.

In presenting said affirmative defense, respondents perpetrated a flagrant fraud upon the court and upon petitioner by introducing fabricated documentary evidence purporting to prove the defense. The court found:

> "That Exhibits Y and Z were fabricated by defendants for the purpose of perpetrating fraud upon the plaintiff and this Court." [Finding 24, R. 69.]

Reasons Relied on for the Allowance of the Writ.

It is petitioner's contention that, in holding that respondents were not estopped, by virtue of their fraud and unclean hands, to challenge affirmatively validity of the patents in suit, the Circuit Court of Appeals failed to follow the doctrine stated by this court in *Hazel-Atlas v. Hartford Empire Glass Co.*, 322 U. S. 328, and *Precision Instrument & Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U. S. 86, and thus not only decided an important federal question in a way probably in conflict with applicable decisions of this court, but denied petitioner equal protection of the laws, and also exceeded its jurisdiction.

Question Presented by This Petition.

The following question is presented by this petition:

Is not a defendant in a patent infringement suit, who fraudulently comes into court with fabricated evidence designed to establish an affirmative defense of invalidity, estopped to be heard in any affirmative respect, to the same extent that a plaintiff-patentee who has fraudulently obtained or unlawfully used his patent is estopped to be heard; and, in such case, should not the presumption of validity flowing from the patent grant prevail?

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: April 2, 1946.

COLLINS MASON,
Attorney for Petitioner.

Certificate of Counsel.

I hereby certify that I am counsel for the petitioner in the above-entitled cause and that in my judgment the foregoing petition is well founded and not interposed for delay.

COLLINS MASON.